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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/870,517	06/01/2001	Anette Buschka	000500-301	9594

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EXAMINER	
COLE, ELIZABETH M	

ART UNIT	PAPER NUMBER
1771	3

DATE MAILED: 11/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

A83

Office Action Summary	Application No.	Applicant(s)	
	09/870,517	BUSCHKA ET AL.	
	Examiner	Art Unit	
	Elizabeth M Cole	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-32 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-32 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-3, 7-10, 29, 31-32 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ruffo et al, U.S. Patent No. 4,018,646. Ruffo discloses a material comprising a mixture of cellulosic fibers and reinforcing fibers . The reinforcing fibers may have a length within the claimed range. The material may be used as absorbent material. The reinforcing fibers may comprise natural ad synthetic fibers including cotton, polyester, polyolefin, rayon, nylon, etc. See col. 10, lines 12-64; col. 21, lines 40-61. The material may be integrated by needling the fibers to interlock them without the use of any bonding agents. See col. 13, lines 34-41. The material may comprise different proportions of pulp to reinforcing textile fibers, such as 50-50 or 60-40. See col. 12, lines 31-40. With regard to the limitation that the material is obtained by directly dry-laying the cellulose fibers on the newly formed gauze of textile fibers, the claims are drawn to a product. The material of Ruffo et al

appears to be the same as the claimed invention although it may not be produced in exactly the same way. Once the Examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward

with evidence establishing an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir. 1983)

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsumura et al, U.S. Patent No. 3,984,898 in view of Ruffo et al, U.S. Patent No. 4,018,646. Matsumura et al discloses a material comprising a mixture of cellulosic short fibers and reinforcing fibers. The relative proportions of the fibers are within the claimed range. The lengths of the reinforcing fibers are within the claimed range. Matsumura et al also discloses a method of making a material comprising a mixture of cellulosic short fibers and reinforcing comprising the steps of forming the reinforcing fibers into a gauze on a wire and then forming the cellulosic fibers into a web and integrating them with the reinforcing fibers to form a fabric. The reinforcing fibers may comprise rayon fibers. Matsumura et al differs from the claimed invention because Matsumura et al does

not teach the claimed dtex of the fibers and does not teach employing the material as an absorbent material after defibering the material and without defibering the material. With regard to defibering, it is conventional in the art of absorbent articles to employ absorbent structures which have been defibered and which have not been defibered and therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed the material with or without defibering it. With regard to the claimed dtex, since the dtex of fibers is related to the strength, softness, etc. of the fibers and the resulting products formed from the fibers, it would have been obvious to one of ordinary skill in the art to have selected fibers having a dtex which would produce a product having sufficient strength, softness, etc. With regard to the relative proportions of reinforcing fibers and cellulosic fibers, since the reinforcing fibers serve to strengthen the material, it would have been obvious to one of ordinary skill in the art to have selected the relative proportions of the reinforcing fibers in order to produce a material having the desired strength. Matsumura et al also differ from the claimed invention because Matsumura et al does not teach that bonding occurs in the absence of a bonding agent, but instead employs a binder. Ruffo et al teaches that employing a bonding agent and mechanically interlocking the fibers are both known and equivalent methods of bonding fibrous webs comprising cellulosic fibers and reinforcing fibers. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have bonded the fiber web of Matsumura et al by mechanically interlocking the web rather than by using a binder, since Ruffo et al teaches that the two bonding methods are known to be equivalents in the art.

6. Claims 4-6, 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruffo et al, U.S. Patent No. 4,018,646. Ruffo discloses a material comprising a mixture of cellulosic fibers and reinforcing fibers . The reinforcing fibers may have a length within the claimed range. The material may be used as absorbent material. The reinforcing fibers may comprise natural ad synthetic fibers including cotton, polyester, polyolefin, rayon, nylon, etc.

Ruffo et al differs from the claimed invention because Ruffo et al does not disclose the fiber size in terms of dtex and does not teach the claimed proportions of reinforcing fibers. With regard to the dtex of the fibers, since Ruffo does teach that the fibers should have a denier of 0.75 to 6 denier, it appears that this would overlap the claimed range. Additionally, since the dtex of fibers is related to the strength, softness, etc. of the fibers and the resulting products formed from the fibers, it would have been obvious to one of ordinary skill in the art to have selected fibers having a dtex which would produce a product having sufficient strength, softness, etc. With regard to the relative proportions of reinforcing fibers and cellulosic fibers, since the reinforcing fibers serve to strengthen the material, it would have been obvious to one of ordinary skill in the art to have selected the relative proportions of the reinforcing fibers in order to produce a material having the desired strength.

The material may be integrated by needling the fibers to interlock them without the use of any bonding agents. See col. 13, lines 34-41. With regard to the limitation that the material is obtained by directly dry-laying the cellulose fibers on the newly formed gauze of textile fibers, the claims are drawn to a product. The material of Ruffo et al appears to be the same as the claimed

invention although it may not be produced in exactly the same way. Once the Examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir. 1983).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (703) 308-0037. The examiner may be reached between 6:30 AM and 5:00 PM Monday through Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (703) 308-2414.

Inquiries of a general nature may be directed to the Group Receptionist whose telephone number is (703) 308-0661.

The fax number for official faxes is (703) 872-9310. The fax number for official after final faxes is (703) 872-9311. The fax number for unofficial faxes is (703) 305-5436.

Elizabeth M. Cole
Primary Examiner
Art Unit 1771

November 14, 2002